IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2432 OF 2004

Mr.Mukesh Jain & Anr. ...Petitioners

Versus

State of Maharashtra & Anr. ...Respondents

.....

Mr.P.M.Vyas i/b Mr.Hitesh P.Vyas for Petitioners.

Mr.A.S.Gadkari, A.P.P. for Respondent No.1.

.....

CORAM: A.M.KHANWILKAR, J.

JANUARY 10, 2005.

P.C.

1. Heard Counsel for the parties.

2. The only argument canvassed before this Court is that except making bald allegation in the complaint in Para 7 about sending of notice and refusal thereof by the accused, no evidence has been produced to support that position inspite of which, the Court below has issued process. Counsel places reliance on Section 138 of the Negotiable

Instruments Act, 1881 to contend that no process could have been issued in this fact situation. I see no substance in this argument. Section 138 of the Act only mandates that statutory notice should be given before instituting the complaint. In Para 7, clear assertion is made that notice has been sent and is deemed to have been refused. The factum of service of notice is a matter for trial. Hence, no ground for quashing. Dismissed.

A.M.KHANWILKAR, J.